punishment of a wrong to the state as such. Here his duty to the state is so immediate that interference with him is practically an interference with the administrative arm of the government. To justify equity in acting here at all, we need an extremely strong case, and the plaintiff's conduct must be in no way immoral *per se*. Even then the interference should go no further than is necessary to prevent the officer from prosecuting in an unreasonable and unnecessarily damaging way. Thus where a number of prosecutions on the same facts are threatened, and it can be shown that irreparable damage will result from them, equity might enjoin all the proceedings save one, leaving that one to determine the controversy. Again, where the proceedings threatened are merely to impose a fine to enforce a tax, although no irreparable injury is shown, the avoidance of a multiplicity of prosecutions is also held enough to give equity jurisdiction.[4]

In those cases where the prosecution is at the instance of a private party, equity may well feel more free to act, although here again the plaintiff must come into equity clear of the charge of conduct in itself immoral. Given such a case, if it can be shown that irreparable injury will result from the criminal proceedings it would seem that equity ought to take jurisdiction and finally decide whether the plaintiff has committed an offense. It would be a stronger case for interference if only the validity of a statute were involved or the question whether certain admitted acts constitute an offense, since where there are issues of fact there is a strong feeling among judges that the best place to try them is before a jury. But even if facts are in dispute, it still seems as if the balance of advantages is in favor of taking jurisdiction in all cases where irreparable damage is threatened. On the other hand, if the damage is not irreparable, though great, and if issues of fact alone are raised, it would seem unnecessary to take the question from a jury; but where the acts complained of are admitted, and the only question is whether they constitute an offense, it would seem that a court of equity could decide the matter as well as a court of law. In that way the risk of damaging an innocent party would be avoided. In the case of *Greiner-Kelly Drug Co.* v. *Truett*, 79 S. W. Rep. 4 (Tex., Sup. Ct.), however, the court held that equity under these circumstances has no jurisdiction.

WHAT LAW GOVERNS USURIOUS CONTRACTS. — As a question of conflict of laws, two general rules have been adopted to determine what law governs usury in contracts. One, sustained by comparatively few jurisdictions, is that the contract is governed by the law of the place of contracting;[1] the other, the more generally accepted, is that the intention of the parties determines which law governs. The latter rule is, however, applied differently in accordance with two different rules of presumption. In some states the law of the place of performance is deemed the law intended, unless the actual intention to the contrary is shown.[2] The prevailing doctrine, however, is that, if by either the law of the place of contracting or of the place of performance the contract would be valid, the parties are pre-

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[4] Chicago *v.* Collins, 175 Ill. 445.

[1] Akers *v.* Demond, 103 Mass. 318.

[2] Bennett *v.* Building & Loan Ass'n, 177 Pa. St. 233.

sumed to have intended the favorable law.[8] If the contract is made and performable in the same state, the courts, reasoning from the facts that no other law could have been intended, generally feel obliged to hold that the law of that state governs.[4] It has, however, been held that, notwithstanding that law would make the contract usurious, still, if one party is domiciled in another state, where the contract would be valid, the law of the latter state is presumed to have been intended.[5] One important qualification upon the right to choose the governing law is that it must not be an attempt to evade the usury laws of the place of contracting.[6] On this ground the contract in a late case in the United States Supreme Court was held usurious. *Building & Loan Association* v. *Brahan*, 24 Sup. Ct. Rep. 532.

The cases show that, while the courts purport to follow the intention of the parties, they really follow their rules of presumption, unless, indeed, the parties have expressly stipulated what law shall govern. Even then, if the choice of the parties does not accord with the rules of presumption, the courts are likely to find that the parties have attempted an evasion. The prevailing doctrine, that the favorable law is presumably intended, illustrates most strikingly the fictitious character of the intention found. This presumption assumes, first, that the parties knew the law of the two jurisdictions; secondly, that they really intended the favorable law to govern. Obviously, most often neither fact actually exists. But the courts have seemed disposed to avoid the usury law, and consequently have treated the question as a subject apart. To gratify that disposition the adoption of an ingenious combination of the vague reasoning of Lord Mansfield in Robinson *v.* Bland,[7] to the effect that the intention of the parties determines what law governs the creation of their contracts, on the one hand, and the fictitious presumption that the favorable law is intended, on the other, has admittedly proved a serviceable device with which to accomplish the desired, though somewhat questionable, result. The only proper rule, it is submitted, is the one first stated, that the law of the place of contracting governs. This, on sound theory, should be true of ordinary contracts,[8] and there is no reason why a different rule should be applied to usurious contracts. When acts are done within a jurisdiction it is difficult to see how rights can be raised on those acts except by that law which alone is in force in that jurisdiction. If the question were merely one of expediency, the long line of decisions to the contrary should perhaps remain unmolested; but if the objection stated is sound, the question is one of power, and therefore the courts should have no hesitation in overruling those decisions.

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[8] Miller *v.* Tiffany, 1 Wall. (U. S.) 298.
[4] Buchanan *v.* Drovers' Nat'l Bank, 55 Fed. Rep. 223.
[5] Scott *v.* Perlee, 39 Oh. St. 63.
[6] Meroney *v.* Bld'g & L. Ass'n, 112 N. C. 842.
[7] 2 Burr. 1077.
[8] See 16 HARV. L. REV. 58; and *infra*, p. 570.

AN OMISSION. — The case of Garst *v.* Hall & Lyon Co., 179 Mass. 588, should have been referred to in the NOTE entitled "Restrictive Agreements as to Chattels" which appeared in the April number. See 17 HARV. L. REV. 415. The case is an authority against the view there advanced.